IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) R.S.A.No.742 of 1992
Date of decision : 13.12.2006

Siri Kishan & another

.....Appellants

Vs.

Surja & others

....Respondents

2) R.S.A.No.743 of 1992
Date of decision : 13.12.2006

Singh Ram

.....Appellant

Vs.

Surja & others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr. Sudeep Mahajan, Advocate
for the appellants (in both the appeals).

Mr. Sudhir Mittal, Advocate
for respondent No.1 (in both the appeals).

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MAHESH GROVER, J.

This judgment will dispose of Regular Second Appeals bearing Nos.742 and 743 of 1992 as they revolve around the same controversy. The facts are being extracted from R.S.A.No.742 of 1992 titled 'Siri Kishan and another v. Surja and others'.

The defendant-appellants have assailed the findings of the lower appellate court whereby the sale in their favour was upset in view of the superior right of pre-emption as claimed by the respondent No.1 on the ground that he was a co-sharer in the suit

property.

Briefly stated the facts of the case are that plaintiff-respondent No.1 filed a suit for possession claiming a superior right of pre-emption on payment of Rs.5,000/- seeking to pre-empt the sale made by respondents No.2 to 4 in favour of the appellants on the ground of his being a co-sharer. The trial court negatived the plea of the plaintiff-respondent N.1 on the ground that an order of partition had been passed by the Court of Asstt. Collector on 6.11.1989, Ex.D2 on record, and Naqsha Zeem prepared on 8.3.1990 thereby severing status of the plaintiff-respondent No.1 as a co-sharer. In appeal, the plaintiff-respondent No.1 by way of additional evidence produced a copy of the order of the Collector dated 19.3.1991 whereby the order dated 6.11.1989, referred to above, was set aside. On the strength of this order of the Collector the learned lower appellate court came to the conclusion that there was no severance of status of the plaintiff-respondent No.1 as a co-sharer and upheld the superior right of pre-emption in his favour.

That apart, Mr. Sudhir Mittal, learned counsel for the respondent No.1, pleaded that the decree of the learned lower appellate court executed on 11.5.1992, even before the first interim directions by this court came into existence on 18.5.1992. The possession of the suit property had also been delivered to the respondent No.1 on 11.5.1992 as per the report of the Tehsildar. This factual aspect could not be controverted by the learned counsel for the appellants.

Learned counsel for the appellants was unable to

controvert the aforestated factual position.

Besides, the consistent law is that the right of the pre-emptor has to be seen on the date of sale, date of filing of the suit and on the date of the decree of the court of first instance. A perusal of Ex.D2 and Ex.D3 further reveals that partition proceedings had not been concluded as the instrument of partition had not been prepared. Only the mode of partition had been determined by the Asstt. Collector in accordance with the provisions of Section 118(1) of the Punjab Land Revenue Act. An appeal against the order dated 6.11.1989 determining the mode of partition had been preferred and the Collector had categorically stayed the proceedings by resorting to the provisions of Section 118(2) of the said Act. As such, therefore, the status of the plaintiff-respondent No.1 as a co-sharer had not been severed.

In view of this, the plaintiff-respondent No.1 continued to be a co-sharer even on the date when the court of first instance had passed the decree dated 22.1.1991. The learned trial court was in error in holding that the status of the plaintiff-respondent No.1 as a co-sharer had been severed.

The Hon'ble Supreme Court in **Shyam Sunder and others v. Ram Kumar and another** (2001) 8 Supreme Court Cases 24 has observed as under :

> "The court has no option but to grant decree of pre-emption where there is a sale of a property by another co-sharer. And for that reason the courts consistently have taken the view that where there is a

sale of holding or property by a co-sharer, the right of pre-emption is required to be settled at the earliest either on the pre-emptor's proving his qualification to pre-empt on the date of the sale, on the date of filing of suit, and on the date of the decree of the court of first instance or the vendee improving his status till the adjudication of the suit for pre-emption and after adjudication of the suit any loss of qualification by the pre-emptor or vendee improving his status equal or above to right of pre-emptor is of no consequence.

In Hans Nath v. Ragho Prasad Singh the Privy Council held that a pre-emptor to maintain a suit for pre-emption is required to prove his right of pre-emption on three important dates. The claimant must possess right of pre-emption on the date of sale. The claimant must possess the same right on the date when the suit is instituted and that right should continue to exist on the date of adjudication of the suit. However, it is a matter of no consequence whether the trial court decrees or dismisses the suit.

It has also been the consistent view of the Privy Council and various High Courts that a pre-emptor must possess qualification to pre-empt a sale on the date of decree of the court of first instance only for maintainability of the suit although it is immaterial that the pre-emptor loses the right of pre-emption after the

adjudication of the suit either by his own act or the vendee improving his status equal to that of the pre-emptor during pendency of appeal filed against the decree of the trial court. This view of law is in consonance with the object behind the right of pre-emption and held the field for over a century with which the Supreme Court is in agreement, as nothing has been shown which would justify the taking of a contrary view and disturb the settled law."

That apart, as noticed above, a vested right accrued to the pre-emptor respondent No.1 which cannot be defeated.

Besides, no question of law is shown to have arisen as the law relating to pre-emption has been conclusively answered in **Shyam Sunder's case** (supra).

For the reasons stated, there is no merit in the appeals which are accordingly dismissed.

13.12.2006 (MAHESH GROVER)
JUDGE

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For orders, see RSA No.742 of 1992 (Siri Kishan and another v. Surja and others).

.12.2006 (MAHESH GROVER)
JUDGE

dss